



513 NE-16

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 24 1984

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Nebraska PSD SIP

FROM: Sara Schneeberg, Attorney *Sara Schneeberg*
Office of General Counsel, Air & Radiation Division

TO: Mary Carter, Region VII

The offices handling stack heights here at Headquarters still haven't made a final decision, but I believe they're close enough that we can start to move on this package now. I'm attaching some suggested language for the Federal Register notice. I suggest we add the attached language to the PSD section on page four of the notice. We can just leave the stack heights section as is and take no action on it.

Since this is a final package, we need an enforceable commitment from the state before we take final action. If we get that commitment, we won't need to repropose. The commitment should take the form of a letter from the Governor, the Attorney General or the head of the state air agency, whatever is necessary to bind the state to implement the program only according to the commitment. We must be able to take enforcement action if the state violates the commitment. The state letter should be incorporated as part of the SIP package.

Unfortunately, a new issue has arisen since we last spoke on this SIP. In addition to the stack heights case, the DC Circuit decided the vessel emissions case on January 17, 1983. The court ruled that in 1982 EPA improperly deleted the requirement in the 1980 rules that certain dockside emissions of vessels docked at marine terminals be regulated under a state PSD program. As a result of this decision, EPA can not approve a PSD SIP in a state with marine terminals unless the SIP provides for regulation of certain dockside emissions. This brings up two questions in relation to the Nebraska SIP.

1. Does Nebraska have any terminals, ie on the Missouri River?
2. Does the Nebraska SIP regulate dockside emissions?

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JAN 27 1984

EPA-REG. VII
ARWM-ARBR
KANSAS CITY, MO.

Rule 4.01 incorporates 40 CFR 52.21 "effective August 7, 1980." Hopefully, this includes our original requirement to regulate dockside emissions. However, Nebraska may have meant to incorporate the 1982 changes excluding dockside emissions. I suggest you check with Nebraska on both of the above questions to make sure there's no problem. If there are no terminals, we can just say that in the Federal Register and not worry about the rules. If, as I suspect, Nebraska intended to incorporate the 1980 requirement including dockside emissions, we can state that in the Federal Register and indicate that the Nebraska SIP is still approvable despite the recent court decision. If you need help drafting language let me know after you've talked with the state.

I believe the PSD stack heights and vessel emissions language are all we need for this package now, having previously agreed to change the CFR language on retention of §52.21 at our last phone conversation. Let me know if you think we need anything else or if you have any problems or suggested changes on the attached language. If it looks ok, go ahead and contact the state to be sure they are willing to make the necessary commitment.

I'll let you know as soon as things are final or if there are any changes on the stack heights issue. We can then get a formal letter from the state and move the package forward. Thanks for your help and patience on this.

cc: Nancy Mayer, OAQPS

Stack Heights language for Nebraska PSD SIP

The Nebraska PSD program includes a general prohibition against granting credit for stack heights exceeding good engineering practice at Rule 4.01 incorporating 40 CFR 52.21(h) by reference. The U.S. Court of Appeals for the District of Columbia recently ordered EPA to reconsider certain portions of its generic regulations that establish requirements for detailed state stack heights regulations (see below). As a result of this decision EPA can only approve a general PSD stack height prohibition such as the one in Rule 4.01 if the state makes an enforceable commitment to implement the provision in a manner consistent with the Court's decision. Specifically, EPA can approve a PSD stack height prohibition if the state makes an enforceable commitment to only allow credit for stack heights based on the following criteria:

1. Pre-1971 stacks, provided that no new units are connected to the stacks.
2. Stacks below the 65 meter de minimis height.
3. Stacks below the $H+1.5L$ formula height provided that the stacks have not been raised.
4. Pre-1979 stacks below the $2.5H$ formula height provided that the source can demonstrate reliance on the formula in designing the stacks.
5. Increases in existing stack height or stack heights exceeding the formula height if accompanied by a fluid modeling demonstration that:

a. Complies with the Guideline for Use of Fluid Modeling to Determine Good Engineering Practice Stack Height, July 1981, EPA 450/4-881-003,

b. did not include any structures or terrain obstacles beyond 5L or 1/2 mile from the stack, and

c. shows that the downwash causes a violation of the NAAQS.

Nebraska has made this commitment by letter dated _____. This letter is part of the SIP submittal EPA is approving today.